

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JAMES M. McCARTHY and  
CHERYL A. McCARTHY,

Plaintiffs,

v.

**DECISION AND ORDER**

03-CV-103S

VILLAGE OF ALBION, et al.,

Defendants.

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1. Plaintiffs, acting pro se, commenced this action on February 7, 2003, by filing a Complaint in the United States District Court for the Western District of New York. Plaintiffs allege that Defendants violated their constitutional rights in attempting to enforce building code violations on their multi-family rental property, and seek relief pursuant to 42 U.S.C. § 1983.

2. On November 23, 2006, this case was referred to the Honorable H. Kenneth Schroeder, United States Magistrate Judge, for all pretrial matters including report and recommendation on dispositive motions.

3. The docket reflects that Plaintiffs have been granted numerous extensions of the deadlines to complete discovery and to amend the complaint, among other things, and that they have been admonished for their failure to move this case along.

4. On November 6, 2006, Judge Schroeder filed a Decision and Order granting Defendants' Motion to Compel an inspection of the subject property. The record reflects that Plaintiffs would not permit the inspection to go forward, even after Judge Schroeder advised them that he would recommend dismissal of this action should they refuse.

5. On November 24, 2006, Judge Schroeder filed a Report, Recommendation and Order recommending that Plaintiffs' case be dismissed pursuant to Rule 37(b)(2)(C)

of the Federal Rules of Civil Procedure for their failure to comply the court ordered discovery, specifically, for obstructing Defendants from inspecting the subject property.<sup>1</sup>

6. On January 19, 2007, Plaintiffs filed Objections to Judge Schroder's Report, Recommendation and Order in accordance with 28 U.S.C. § 636(b)(1)(C) and Local Rule 72.3(a)(3).

7. This Court has thoroughly reviewed this case *de novo* and has considered Judge Schroeder's Report, Recommendation and Order, Plaintiff's Objections thereto, and the applicable law. Upon due consideration, this Court will accept Judge Schroeder's recommendation to dismiss Plaintiffs' case, based on their failure to permit the inspection of the subject property as ordered by this Court. Plaintiffs' Objections are therefore denied.

IT HEREBY IS ORDERED, that this Court accepts Judge Schroeder's November 24, 2006 Report, Recommendation and Order (Docket No. 79) in its entirety, including the authorities cited and the reasons given therein.

FURTHER, that Plaintiffs' Objections (Docket No. 86) are DENIED.

FURTHER, that Plaintiffs' case is hereby dismissed pursuant to Rule 37(b)(2)(C) for failure to comply with court ordered discovery.

FURTHER, that the Clerk of the Court is directed to take the necessary steps to close this case.

SO ORDERED.

Dated: February 1, 2007  
Buffalo, New York

/s/William M. Skretny  
WILLIAM M. SKRETNY  
United States District Judge

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<sup>1</sup>Familiarity with Judge Schroeder's November 6, 2006 Decision and Order and his November 24, 2006 Report, Recommendation and Order is presumed.